Audit of Forest Planning and Practices and Forest Practices Code Enforcement on Nisga'a Lands

Report from the Chair

FPB/ARC/48S

August 2002

Report from the Chair

As part of the its 2001 audit program, the Forest Practices Board audited forest planning and practices on Nisga'a lands for compliance with the Forest Practices Code. The activities of West Fraser Timber, Sim Gan Corporation, Skeena Cellulose Inc. and the Ministry of Forests' Small Business Forest Enterprise Program were subject to the audit. The Board also audited the appropriateness of government's enforcement of forest practices legislation on Nisga'a lands.

These audits are required under Chapter 5 – Section 55 of the *Nisga'a Final Agreement* (the Agreement). The Agreement requires the Board to perform annual audits of compliance with and enforcement of forest practices legislation and forestry related requirements of the Agreement during a five-year transition period ending May 10, 2005. For more information on the Agreement see www.ntc.bc.ca.

The Nisga'a lands are located in and around the Nass Valley, which is approximately 100 kilometres northwest of the city of Terrace. The compliance audit reports contain detailed descriptions of the operating areas for the auditees.

The Agreement and appendices provide direction regarding key forest resources on Nisga'a lands. Neither the Kalum Land and Resource Management Plan nor higher-level planning elements of the Code apply to activities on Nisga'a lands.

The following represents the Board Chair's commentary related to the audits, as allowed by section 189(3) of the *Forest Practices Code of British Columbia Act*. The purpose of the section 189 report is to comment on facts and issues relevant to stewardship of the land as generally represented in the Forest Practices Code's preamble. The full report contains the Board and auditor of record reports for the audits. The full report is available on the Board's Web site (http://www.fpb.gov.bc.ca), or by calling 1-800-994-5899. This is the Board's first of five annual audits of forest planning and practices and Code enforcement on Nisga'a lands.

The audits of forestry planning and practices on Nisga'a lands have relevance to the Nisga'a people and the general public in determining whether provincially authorized forestry operations on Nisga'a lands are being appropriately managed during the transition period. The audits will also determine whether obligations (e.g., free-growing obligations) will be met, in order to ensure that the lands are turned over from the Province to the Nisga'a people in a well-managed state. Under the Agreement, the Province must ensure that all outstanding obligations on Nisga'a lands are fulfilled.

Whose activities on Nisga'a lands can the Board audit?

Chapter 5 – Section 54 of the Agreement states that, "During the transition period, the powers of the Forest Practices Board set out in forest practices legislation in respect of complaints, audits and special reports apply on Nisga'a lands to holders of agreements under the Forest Act and to holders of licences."

As of the effective date of the Agreement, Nisga'a lands were recognized as belonging to the Nisga'a Nation. However, during the transition period, provincially authorized forestry activities are permitted to continue. It is these activities that the Board has jurisdiction to audit. The Board does not have jurisdiction to audit forestry activities authorized by the Nisga'a Nation.

How are the Board's audits on Nisga'a lands different from other Board audits?

The compliance and enforcement audits on Nisga'a lands differ from other Board audits in a number of ways. Auditees for other Board audits are selected randomly, either as a separate licensee or as part of an audit of an area of land. All forest and range activity in the selected area or within the selected licence is audited. The Nisga'a lands and the licensees in that area were not selected randomly; the audit was required by the Agreement.

The audits on Nisga'a lands also differ from other Board audits in that compliance with both the requirements of the Agreement and forest practices legislation are audited. The Board's audits outside of Nisga'a lands have jurisdiction to audit only Code requirements.

The Board will be conducting annual audits of forest practices on Nisga'a lands during the transition period; these are the only annual audits that the Board conducts of the same auditees. The Board does not usually conduct annual audits of the same auditee due to the expense associated with the audits. Conducting annual audits will provide the Board with a unique opportunity to assess emerging issues, follow-up on issues identified in previous audits, and assess auditees' follow-up on Board recommendations.

What requirements of the Agreement were not audited in 2001, and why?

Chapter 5 – section 55 of the Agreement requires the Board to audit "forest practices legislation." The Agreement defines forest practices legislation as the *Forest Practices Code of British Columbia Act*, the *Forest Act*, or any regulations under those Acts. The Board's 2001 audit focussed on compliance with and enforcement of forest practices requirements under the Code and the Agreement. *Forest Act* requirements were not audited for several reasons. For one reason, the Board has not previously had the jurisdiction to audit *Forest Act* requirements, and therefore has not audited to these requirements in the past. Although

the Agreement provides the Board with the necessary jurisdiction, on Nisga'a lands, to audit activities subject to the *Forest Act*, it is not anticipated that the Board will audit these requirements due to the low level of harvest activity and associated obligations on Nisga'a lands under the *Forest Act*. The Board also notes that there does not appear to be any value to the parties of the Agreement in the Board auditing *Forest Act* requirements. The Nisga'a Lisim's Government and the Province have indicated that they had not anticipated that the Board would audit *Forest Act* requirements; the position of the Government of Canada is unknown.

The Board did not audit compliance with district manager obligations (e.g., backlog not-satisfactorily stocked areas) as part of the 2001 audit. District manager obligations will be audited in future Board audits on Nisga'a lands.

What were the results of the 2001 audits?

The Board's 2001 compliance audits on Nisga'a lands determined that, in general, sound forest management was being practiced during the first year of the transition period. Some significant non-compliance findings were identified however, related to riparian management and road maintenance. The detailed findings of the compliance audits are contained in the auditor of record reports included in section II of this document.

The enforcement audit identified a number of weaknesses in the Kalum Forest District's compliance and enforcement program on Nisga'a lands. The Board notes that the district has taken steps to ensure that no significant environmental harm has occurred on Nisga'a lands, including assignment of experienced staff to conduct compliance and enforcement in the area. The detailed findings of the enforcement audit are contained in the auditor of record report included in section III of this document.

The auditors did identify one section of private road on Nisga'a lands that was not built to the standards set by the Code; however, the Code does not apply to private land and the Board does not have jurisdiction to assess activities on private land.

What will future Board audits on Nisga'a lands address?

Future Board audits will continue to assess compliance with Code and Agreement requirements on an annual basis. Audits of the appropriateness of government's enforcement will not be conducted on an annual basis; however, the audit period for future enforcement audits will include all enforcement related activity that occurred following the most recent enforcement audit.

In addition to assessing compliance and enforcement, future Board audits will follow up on any issues of non-compliance noted in past audits on Nisga'a lands, as well as any other

issues of public interest. Future audits will also assess how auditees addressed any applicable Board recommendations.

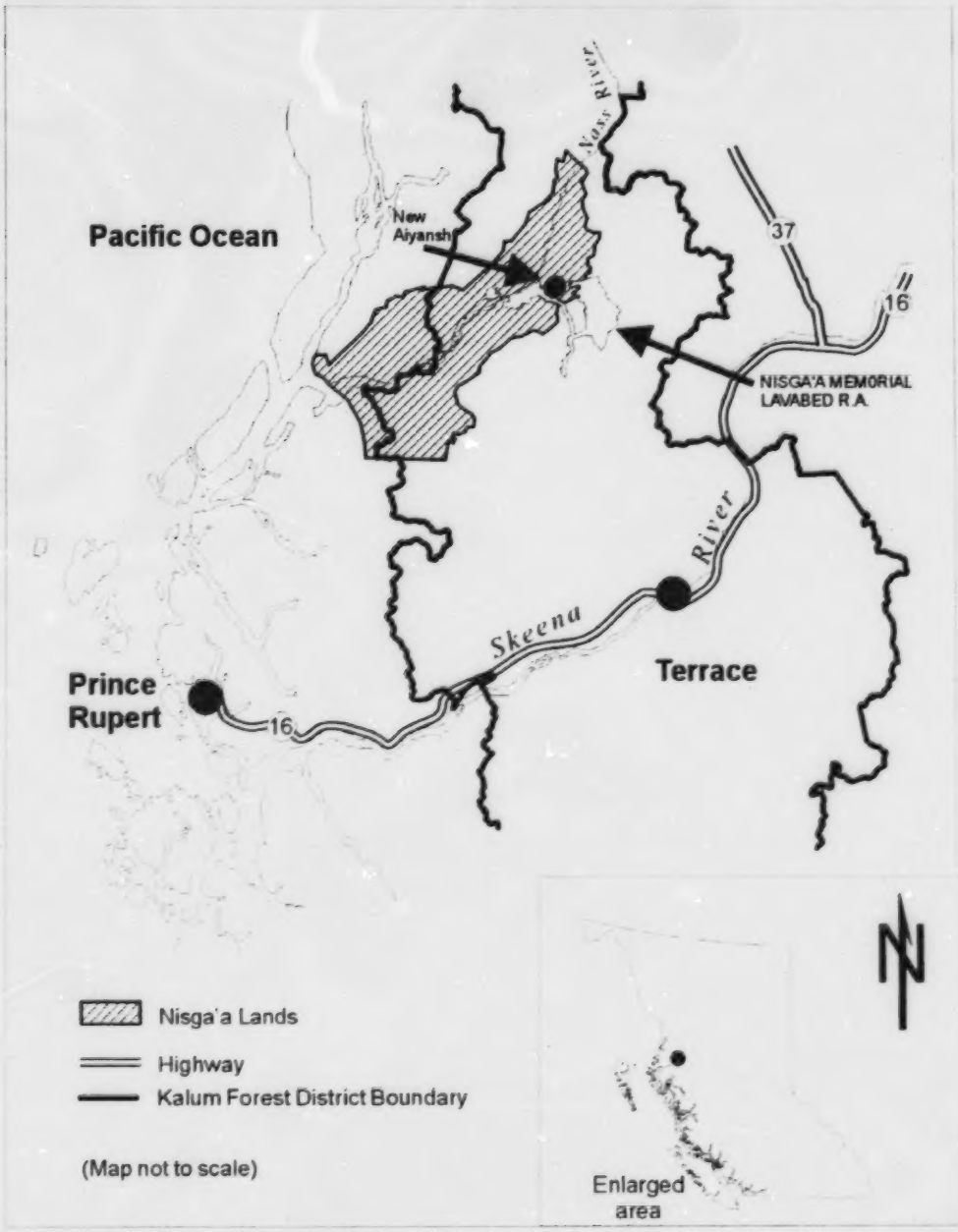
It was noted during the 2001 audits that there are large areas of regenerating stands on Nisga'a lands that have not yet reached the age and stocking levels where they are considered free-growing. The audits also noted that a number of those areas experience either high levels of brush competition or potential forest-health issues. Future Board audits will pay particular attention to the achievement of silviculture obligations in these areas.

The first Board audit on Nisga'a lands notes issues related to forest planning and practices by some auditees around riparian areas. Future audits will include a focus on assessing compliance with Code and Agreement requirements around riparian areas.

Future audits will include auditing compliance with Code and Agreement requirements related to district manger obligations and Forestry Transition Committee responsibilities. As noted above, the Board does not anticipate auditing *Forest Act* requirements in future audits on Nisga'a lands.

W.N. (Bill) Cafferata, RPF
Chair, Forest Practices Board
July 26, 2002

Audit of Nisga'a Lands



Audit of Forest Planning and Practices and Forest Practices Code Enforcement on Nisga'a Lands

FPB/ARC/48

August 2002

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I. Report from the Chair

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These audits are required under Chapter 5 – Section 55 of the *Nisga'a Final Agreement* (the Agreement). The Agreement requires the Board to perform annual audits of compliance with and enforcement of forest practices legislation and forestry related requirements of the Agreement during a five-year transition period ending May 10, 2005. For more information on the Agreement see www.ntc.bc.ca.

The Nisga'a lands are located in and around the Nass Valley, which is approximately 100 kilometres northwest of the city of Terrace. The compliance audit reports contain detailed descriptions of the operating areas for the auditees.

The Agreement and appendices provide direction regarding key forest resources on Nisga'a lands. Neither the Kalum Land and Resource Management Plan nor higher-level planning elements of the Code apply to activities on Nisga'a lands.

Sections II and III of this document contain the Board and auditor of record reports for the audits. This section represents the Board Chair's commentary related to the audits, as allowed by section 189(3) of the *Forest Practices Code of British Columbia Act*. The purpose of the section 189 report is to comment on facts and issues relevant to stewardship of the land as generally represented in the Forest Practices Code's preamble.

The audits of forestry planning and practices on Nisga'a lands have relevance to the Nisga'a people and the general public in determining whether provincially authorized forestry operations on Nisga'a lands are being appropriately managed during the transition period. The audits will also determine whether obligations (e.g., free-growing obligations) will be met, in order to ensure that the lands are turned over from the Province to the Nisga'a people in a well-managed state. Under the Agreement, the Province must ensure that all outstanding obligations on Nisga'a lands are fulfilled.

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The Board will be conducting annual audits of forest practices on Nisga'a lands during the transition period; these are the only annual audits that the Board conducts of the same auditees. The Board does not usually conduct annual audits of the same auditee due to the expense associated with the audits. Conducting annual audits will provide the Board with a unique opportunity to assess emerging issues, follow-up on issues identified in previous audits, and assess auditees' follow-up on Board recommendations.

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The enforcement audit identified a number of weaknesses in the Kalum Forest District's compliance and enforcement program on Nisga'a lands. The Board notes that the district has taken steps to ensure that no significant environmental harm has occurred on Nisga'a lands, including assignment of experienced staff to conduct compliance and enforcement in the area. The detailed findings of the enforcement audit are contained in the auditor of record report included in section III of this document.

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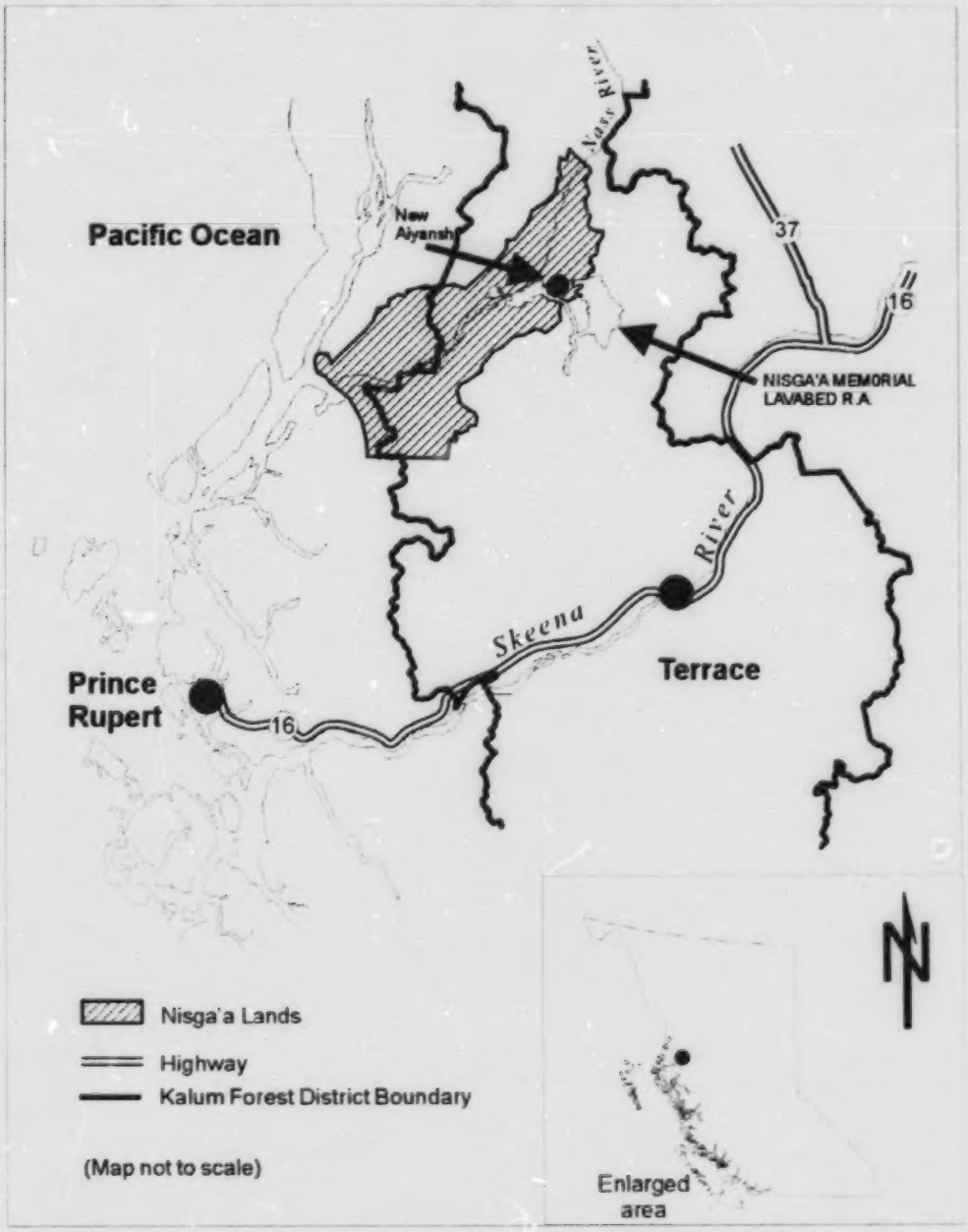
Future audits will include auditing compliance with Code and Agreement requirements related to district manger obligations and Forestry Transition Committee responsibilities. As noted above, the Board does not anticipate auditing *Forest Act* requirements in future audits on Nisga'a lands.

W.N. (Bill) Cafferata, RPF
Chair, Forest Practices Board
July 26, 2002

Audit of Nisga'a Lands



II. Audits of Forest Planning and Practices

A. Compliance Audit Process

B. Audit of Kalum Forest District SBFEP

C. Audit of Skeena Cellulose Inc.

D. Audit of Sim Gan Forest Corporation

E. Audit of West Fraser Mills Ltd.

A. Forest Practices Board Compliance Audit Process for Nisga'a Lands

Background

The Forest Practices Board conducts audits of government and agreement-holders for compliance with the *Forest Practices Code of British Columbia Act* and regulations (the Code). The Board has the authority to conduct these periodic independent audits under section 176 of the *Forest Practices Code of British Columbia Act* (the Act). Compliance audits examine forest planning and practices to determine whether or not they meet Code requirements.

The Forest Practices Board is also required by Chapter 5 – Section 55 of the *Nisga'a Final Agreement* (the Agreement) to perform compliance audits of forest agreements and licences on Nisga'a lands in each year of a defined five-year transition period ending on May 10, 2005. During this period, annual audits must assess compliance with provincial forest practices legislation and the forestry-related requirements of the Agreement.

Audit Standards

Audits by the Forest Practices Board are conducted in accordance with the auditing standards developed by the Board. These standards are consistent with generally accepted auditing standards.

Audits on Nisga'a lands determine compliance with the Code based on criteria derived from the *Forest Practices Code of British Columbia Act* and its related regulations as well as the forestry-related requirements of the Agreement. Audit criteria are established for the evaluation or measurement of each practice required by the Code or Agreement. The criteria reflect judgments about the level of performance that constitutes compliance with each requirement.

The standards and procedures for compliance audits are described in the Board's *Compliance Audit Reference Manual*. In addition, specific additional tests were required to audit the requirements of the Agreement (Chapter 5 and appendix H).

Audit Process

Conducting the Audit

The Board determines the staff and resources required to conduct the audit and the period covered by the audit. Board staff also meet with the party being audited to discuss the logistics of the audit before commencing the work.

Aside from notifying those licensees that operate on Nisga'a lands about the audit, the Board also notifies the Forestry Transition Committee. The Forestry Transition Committee and the Ministry of Forests, Kalum Forest District, which is part of the Prince Rupert Forest Region, jointly administer forestry activities on Nisga'a lands. The Forestry Transition Committee consists of the Kalum forest district manager and one person authorized by the Nisga'a Nation.

All the activities carried out during the period subject to audit are identified; for example, harvesting or replanting sites and building or deactivating road sections. The items that make up each forest activity are referred to as a "population." For example, all sites harvested form the "timber harvesting population." All road sections constructed form the "road construction population." The populations are then sub-divided based on factors such as characteristics of the sites and potential severity of the consequences of non-compliance on the sites.

For each population, the auditors choose the most efficient means of obtaining information to conclude whether there is compliance with the Code. Because of limited resources, auditors usually rely upon sampling to obtain audit evidence, rather than inspecting all activities.

Individual sites and forest practices within each population have different characteristics, such as the type of terrain or type of yarding. Each population is divided into distinct sub-populations on the basis of common characteristics (e.g., steep ground vs. flat ground). A separate sample is selected for each population (e.g., the cutblocks selected for auditing timber harvesting). Within each population, more audit effort (i.e., more audit sampling) is allocated to the sub-population where the risk of non-compliance is greater.

Audit work in the field includes assessments from the air using helicopters and intensive ground procedures, such as measuring specific features like road or riparian reserve zone width. The audit teams generally spend one to two weeks in the field.

Evaluating the Results

The Board recognizes that compliance with the many requirements of the Code or the Agreement is more a matter of degree than absolute adherence. Determining compliance, and assessing the significance of non-compliance, requires the exercise of professional judgment within the direction provided by the Board.

Auditors collect, analyze, interpret and document information to determine the audit results. The audit team, composed of professionals and technical experts, first determines whether forest practices are in compliance with Code or Agreement requirements. For those practices considered to not be in compliance, the audit team then evaluates the degree to which the practices are judged not in compliance. The significance of the non-compliance is determined based on a number of criteria, including the magnitude of the event, the frequency of its occurrence, and the severity of the consequences.

As part of the assessment process, auditors categorize their findings into the following levels of compliance:

Compliance – where the auditor finds that practices meet Code or Agreement requirements.

Not significant non-compliance – where the auditor, upon reaching a non-compliance conclusion, determines that a non-compliance event, or the accumulation and consequences of a number of non-compliance events, is not significant and is not considered worthy of reporting.

Significant non-compliance – where the auditor determines that the event or condition, or the accumulation and consequences of a number of non-compliance events or conditions, is or has the potential to be significant, and is considered worthy of reporting.

Significant breach – where the auditor finds that significant harm has occurred, or is beginning to occur, to persons or the environment as a result of the non-compliance. A significant breach can also result from the cumulative effect of a number of non-compliance events or conditions.

Identification of a possible significant breach requires the auditor to conduct tests to confirm whether or not there has been a breach. If it is determined that a significant breach has occurred, the auditor is required by the *Forest Practices Board Regulation* to immediately advise the Board, the party being audited, and the Ministers of Forests, Energy and Mines, and Water, Land and Air Protection.

Reporting

Based on the above evaluation, the auditor then prepares the "Report from the Auditor" for submission to the Board. The party being audited is given a draft of the report before it is submitted to the Board so that the party is fully aware of the findings. The auditee is also kept fully informed of the audit findings throughout the process, and is given opportunities to provide additional relevant information and to ensure the auditor has complete and correct information.

Once the auditor submits the report, the Board reviews it and determines if the audit findings may adversely affect any party or person. If so, the party or person must be given an opportunity to make representations before the Board decides the matter and issues a final report to the public and government. The representations allow parties that may potentially be adversely affected to present their views to the Board.

At the discretion of the Board, representations may be written or oral. The Board will generally decide on written representations, unless the circumstances strongly support the need for an oral hearing.

The Board then reviews the report from the auditor and the representations from parties that may potentially be adversely affected before preparing its final report, which includes the Board's conclusions and, if appropriate, recommendations.

If the Board's conclusions or recommendations result in newly adversely-affected parties or persons, additional offers of representations would be required.

Once the representations have been completed, the report is finalized and released: first to the auditee and then to the public and government.

B. Audit of Forest Planning and Practices: Kalum Forest District Small Business Forest Enterprise Program

Board Report

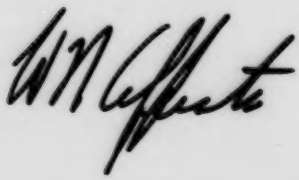
This is the Board's report on a compliance audit of the Kalum Forest District Small Business Forest Enterprise Program (the Kalum SBFEP). The Kalum SBFEP operates on Nisga'a land, primarily in two parcels. One parcel is west of the Nass River and north of the community of Greenville. The second parcel is east of the Nass River, extending up the Nass Valley approximately 17 kilometres from the community of New Aiyansh. As the Report from the Auditor explains (see page 15), the *Nisga'a Final Agreement* (the Agreement) requires the Forest Practices Board to conduct annual compliance audits of forest practices on Nisga'a land for a five-year transitional period, ending on May 10, 2005. These audits must assess compliance with provincial forest practices legislation and the forestry-related requirements of the Agreement.

The Report from the Auditor provides further information on the Agreement and the Small Business Forest Enterprise Program, on the Kalum SBFEP's allowable annual cut, the scope of the audit and the audit findings. The Report from the Auditor is based on the procedures described in Part II-A of this document.

The audit examined the activities and obligations of the Kalum SBFEP related to operational planning, silviculture, and road and bridge maintenance for the period of May 11, 2000, to July 16, 2001. The audit examined these activities for compliance with both the *Forest Practices Code of British Columbia Act* and associated regulations (the Code) and the Agreement. Since the Agreement came into effect May 11, 2000, the Kalum SBFEP has had no authority to award any new timber sale licences on Nisga'a land, and the three timber sales that existed on the effective date are now surrendered and cancelled in compliance with the Agreement. Subsequently, there was no harvesting or road construction during the audit period. Given that there were no active operations, the audit of fire protection was limited to an assessment of fire-preparedness planning.

The Board considered the Report from the Auditor, along with supporting audit evidence, and affirms the auditor's findings and conclusions. The Kalum SBFEP complied, in all significant respects, with the Agreement and Code requirements for operational planning, silviculture, and road and bridge maintenance. Any instances of non-compliance that the audit identified did not indicate a pervasive trend, and did not create actual or potential significant harm to either persons or the environment.

The Board encourages the Kalum SBFEP's efforts towards achieving sound forest management, and looks forward to assessing the Kalum SBFEP's planning and practices in subsequent Board annual audits on Nisga'a lands throughout the remainder of the five-year transition period.



W.N. (Bill) Cafferata, RPF
Chair, Forest Practices Board
July 29, 2002

Auditor of Record Report: Kalum Forest District Small Business Forest Enterprise Program

1.0 Introduction

As part of the Forest Practices Board's 2001 compliance audit program, the activities and obligations of the Kalum Forest District Small Business Forest Enterprise Program (the Kalum SBFEP) located on Nisga'a lands were audited, as required by Chapter 5 – Section 55 of the *Nisga'a Final Agreement* (the Agreement). The Agreement requires the Forest Practices Board to perform compliance audits of forest practices on Nisga'a land in each year of a defined five-year transition period ending on May 10, 2005. During this period, annual audits must assess compliance with provincial forest practices legislation and the forestry-related requirements of the Agreement.

The SBFEP is a program within which the Ministry of Forests awards timber sale licences to small business licensees. The Ministry of Forests, through the district manager, and individual licensees each have separate but interrelated roles and responsibilities within the program:

- The district manager is responsible for the overall management and implementation of the SBFEP, including preparation and giving effect to the forest development plan[i] and silviculture prescriptions,[ii] conducting the majority of road construction, maintenance and deactivation work, and meeting silviculture obligations.

- Individual small business licensees who have been awarded timber sale licences (TSL holders) through the SBFEP have a number of legal responsibilities, as reflected in their timber sale licence and other permits (road permits and road use permits). These responsibilities include some road construction, maintenance and deactivation work, and ensuring that all operations, including harvesting, are carried out in compliance with the *Forest Practices Code of British Columbia Act* and related regulations (the Code).

The district responsibilities and individual TSL holder responsibilities and performance are closely linked. The planning done by the district impacts directly on the TSL holders' abilities to adequately carry out their responsibilities. The quality of a licence holder's timber harvesting activities can affect a district's ability to adequately carry out their work, such as silviculture obligations, after logging is completed.

The Kalum SBFEP has an allowable annual cut (AAC) apportionment of approximately 10,000 cubic metres on Nisga'a lands. However, since the effective date of the Agreement (May 11, 2000) the SBFEP has not had authority to award any new timber sale licences on Nisga'a lands. Additionally, the three timber sales that were already in place on the effective date have been surrendered and cancelled in accordance with the Agreement. Approved cutblocks on Nisga'a land in the current SBFEP forest development plan, will not

be sold, unless through the Nisga'a apportionment. As a result, there was no harvesting or road construction during the audit period.

The Kalum SBFEP operating area is fairly well defined on the Nisga'a land, with the primary areas of operation located in two parcels. One parcel is located west of the Nass River and north of the community of Greenville. The second parcel is located east of the Nass River, extending up the Nass Valley approximately 17 kilometres from the community of New Aiyansh.

Neither the Kalum Land and Resource Management Plan (LRMP) or higher level planning elements of the Forest Practices Code apply to activities under the Kalum SBFEP on Nisga'a land. Direction regarding key forest resources on Nisga'a land is derived from the Agreement and its appendices.

The Forestry Transition Committee and the Ministry of Forests, Kalum Forest District, which is part of the Prince Rupert Forest Region, jointly administer forestry activities on Nisga'a lands. The Forestry Transition Committee consists of the Kalum forest district manager and one person authorized by the Nisga'a Nation.

2.0 Audit Scope

The audit examined the activities and obligations of the Kalum SBFEP related to operational planning, silviculture and the maintenance of roads and bridges. These activities were assessed for compliance with the Code and the Agreement. All activities, planning and obligations for the period May 11, 2000 to July 16, 2001 were included within the scope of the audit.

The activities subject to audit were:

- maintenance of 2 bridges and approximately 24 kilometres of road, involving activities such as road surfacing and cleaning culverts and ditches
- silviculture activities and obligations, such as planting, brushing and regeneration obligations on 14 cutblocks

The activities carried out by the SBFEP were approved in its 1999-2003 forest development plan. However, all timber sales applicable to Nisga'a land, have been surrendered and cancelled since the effective date of the Agreement

Section 3.0 describes the audit of these activities and the results. The Board's audit reference manual, *Compliance Audit Reference Manual, Version 5.0, May 2001*, sets out the standards and procedures that were used to carry out this audit. In addition, specific additional tests were required to audit the requirements of the Agreement (Chapter 5 and appendix H).

2.1 Scope Restriction

The audit of fire protection was limited to an assessment of fire preparedness planning, as there were no active operations at the time of the audit.

3.0 Audit Findings

Planning and practices examined

The audit work on roads and cutblocks included ground-based procedures and assessments from the air using helicopters. The audit examined:

- maintenance of 2 bridges and 18.7 kilometres of active road
- silviculture activities and obligations on 7 cutblocks

The audit also examined Kalum SBFEP's 1999 - 2003 forest development plan and consistency with the Agreement.

Findings

The audit found that the Kalum SBFEP complied in all significant respects, with the operational planning, silviculture and the road and bridge maintenance requirements of the Code.

Instances of non-compliance that were identified did not indicate a pervasive trend, and were not associated with actual or potential significant harm to persons or the environment.

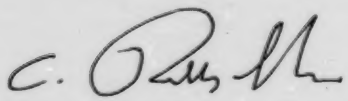
4.0 Audit Opinion

In my opinion, the operational planning, silviculture and road and bridge maintenance activities carried out by the Kalum Forest District Small Business Forest Enterprise Program on Nisga'a lands complied in all significant respects, with the requirements of the Code and the Agreement as of July 2001.

In reference to compliance, the term "in all significant respects" recognizes that there may be minor instances of non-compliance that either may not be detected by the audit, or that are detected but not considered worthy of inclusion in the audit report.

Sections 2 and 3 of this report from the auditor describe the basis of the audit work performed in reaching the above opinion. The audit was conducted in accordance with the

auditing standards of the Forest Practices Board. Such an audit includes examining sufficient forest planning and practices to support an overall evaluation of compliance with the Code and the Agreement.



Chris Ridley-Thomas
Auditor of Record

Vancouver, British Columbia
May 21, 2002

[i] A forest development plan is an operational plan that provides the public and government agencies with information about the location and scheduling of proposed roads and cutblocks for harvesting timber over a period of at least five years. The plan must specify measures that will be carried out to protect forest resources (including water, fisheries, and other forest resources). It must also illustrate and describe how objectives and strategies established in higher level plans, where they have been prepared, will be carried out. Site specific plans are required to be consistent with the forest development plan.

[ii] A silviculture prescription is a site specific operational plan that describes the forest management objectives for an area to be harvested (a cutblock). The silviculture prescriptions examined in the audit are required to describe the management activities proposed to maintain the inherent productivity of the site, accommodate all resource values including biological diversity, and produce a free growing stand capable of meeting stated management objectives. Silviculture prescriptions must be consistent with forest development plans that encompass the area to which the prescription applies.

C. Audit of Forest Planning and Practices: Skeena Cellulose Inc.

Board Report

This is the Board's report on a compliance audit of the activities and obligations of Skeena Cellulose Inc. (Skeena) on Nisga'a lands. Historically, Skeena's activities on Nisga'a lands were managed as part of Tree Farm Licence (TFL) 1. On May 11, 2000, the effective date of the Nisga'a Final Agreement (the Agreement), those portions of TFL 1 located on Nisga'a land were incorporated into a new non-replaceable licence, FL A64298. The audit covered Skeena's current operations under the new forest licence as well as residual silviculture and road maintenance obligations associated with TFL 1.

Skeena's primary areas of operation are east of the Nass River, extending up the Nass Valley from the Ishkheenickh River to the lower Kiteen drainage. As the Report from the Auditor explains (see page 23), the Agreement requires the Forest Practices Board to conduct annual audits of forest agreements and licences on Nisga'a land for a five-year transitional period, ending on May 10, 2005.

The Report from the Auditor provides further details on the location of the licence, the scope of the audit, and the audit findings. The Report from the Auditor is based on the audit procedures described in Part II-A of this document.

The audit examined Skeena's operational planning; timber harvesting; road construction, maintenance and deactivation; silviculture; and fire protection practices for the period from May 11, 2000, to July 16, 2001. The audit examined these activities for compliance with both the *Forest Practices Code of British Columbia Act* and associated regulations (the Code) and the Agreement.

Before completing this report, the Board considered the Report from the Auditor, along with supporting audit evidence, and written representations from Skeena. The Board affirms the auditor's findings and conclusions. With the exception of the significant non-compliance in the area of planning and harvesting practices in and adjacent to riparian areas, Skeena's forest practices and planning were in compliance, in all significant respects, with the Agreement and Code requirements for operational planning; silviculture; fire protection; and road construction, maintenance and deactivation activities.

Other identified instances of non-compliance in the areas of timber harvesting, operational planning, road maintenance, silviculture and fire protection were minor in nature and as such were not considered worthy of reporting.

The Board notes that in 5 of 14 cutblocks examined, Skeena contravened several Code requirements for riparian management, including the unauthorized harvest of small sections of riparian buffers in three riparian areas, and the failure to classify two riparian features (one non-fish stream and one wetland). The Board is concerned that, despite the fact that each issue taken separately would not be considered significant, taken as a whole, the cumulative effect of practices represents a distinct risk to the riparian values within FL A64298 on Nisga'a lands.

The Board is further concerned with the operational inconsistencies observed in the audit. We understand that Skeena is operating with some older, dated silviculture prescriptions; and despite more current information being available, the plans had not been updated. In addition, in some cases the execution of the prescription did not match the prescription requirements. To remedy this situation, Skeena told the Board it has started a review of all silviculture prescriptions within its Terrace operations, to cover all active and unlogged cutblocks. The review includes riparian classification and wording in the silviculture prescriptions. The Board encourages and applauds this initiative as a positive and immediate response, but wishes to emphasize Skeena's need to not only change outdated prescriptions, but to improve operational implementation of plans so that practices will be a reflection of the prescription, and prescriptions will be an accurate reflection of an achievable goal for that landbase.

Recommendation

As provided by section 185 of the Act, the Board recommends that Skeena evaluate its silviculture prescriptions prior to harvesting to ensure that the most current field information has been included. Skeena should also ensure that these prescriptions are amended accordingly upon the receipt of any new information.

The Board encourages Skeena's efforts towards achieving sound forest management, and looks forward to assessing Skeena's planning and practices in subsequent Forest Practices Board annual audits on Nisga'a lands throughout the remainder of the five-year transition period.

W.N. (Bill) Cafferata, RPF
Chair, Forest Practices Board
July 29, 2002

Auditor of Record Report: Skeena Cellulose Inc.

1.0 Introduction

As part of the Forest Practices Board's 2001 compliance audit program, the activities and obligations of Skeena Cellulose Inc. (Skeena) on Nisga'a lands were audited as required by chapter 5 – section 55 of the *Nisga'a Final Agreement* (the Agreement). The Agreement requires the Forest Practices Board to perform compliance audits of forest agreements and licences on Nisga'a lands in each year of a defined five-year transition period ending on May 10, 2005. During this period, annual audits must assess compliance with provincial forest practices legislation and the forestry-related requirements of the Agreement.

Historically, Skeena's activities on Nisga'a lands were managed as part of Tree Farm Licence (TFL) #1. On the effective date of the Agreement, May 11, 2000, those portions of TFL #1 located on Nisga'a lands were incorporated into a new non-replaceable forest licence (forest licence A64298). The audit covered Skeena's current operations under the new forest licence as well as residual silviculture and road maintenance obligations associated with TFL #1.

The allowable annual cut for the forest licence ranges between 113,000 and 140,000 cubic metres for each year of the five-year transition period.

The Nisga'a lands are located in and around the Nass Valley, which is approximately 100 kilometres northwest of the City of Terrace. Forest licences do not have specific borders within which activities take place. However, Skeena's current operating area is fairly well defined, with the primary areas of operation being east of the Nass River, extending up the Nass Valley from the Ishkheenickh River to the lower Kiteen drainage.

Neither the Kalum Land and Resource Management Plan (LRMP) or higher level planning elements of the Forest Practices Code apply to activities on Nisga'a lands. Direction regarding key forest resources on Nisga'a lands is derived from the Agreement and its appendices.

Forestry-related provisions of the Agreement include forest cover constraints (e.g. a minimum age of 120 years must be maintained for at least 80 percent of the pine mushroom polygon); visual objectives for specific sites; requirements for local approval of harvesting in specific locations (e.g. harvesting within one kilometre of Gingietl Creek Ecological Reserve requires the agreement of the Gitwinksihlkw Village Government) and specific no harvest zones (e.g. 100 metres either side of the centre line of the Grease Trail).

The Forestry Transition Committee and the Ministry of Forests, Kalum Forest District, which is part of the Prince Rupert Forest Region, jointly administer forestry activities on

Nisga'a lands. The Forestry Transition Committee consists of the Kalum forest district manager and one person authorized by the Nisga'a Nation.

2.0 Audit Scope

The audit examined Skeena's activities and obligations related to operational planning (including forest development plans[i] and silviculture prescriptions[ii]); timber harvesting; silviculture; fire protection; and construction, maintenance and deactivation of roads. These activities were assessed for compliance with the *Forest Practices Code of British Columbia Act* and related regulations (the Code), and the Agreement. All activities, planning and obligations for the period May 11, 2000, to July 16, 2001, were included in the scope of the audit, including continuing reforestation and road maintenance obligations incurred by Skeena when the operating area was part of TFL #1.

The activities subject to audit, were:

- harvesting of 14 cutblocks
- construction of 11 new bridges and 18.9 kilometres of new roads
- maintenance of 10 bridges and approximately 201 kilometres of road, involving activities such as road surfacing and cleaning culverts and ditches
- seasonal deactivation of approximately 22 kilometres of road and permanent deactivation of 25.4 kilometres of road
- silviculture activities and obligations, such as planting, brushing, regeneration and free-growing obligations on 35 cutblocks
- protection activities including fire preparedness plans and fire preparedness measures at active work sites

Operational plans approved during the period included silviculture prescriptions for 16 cutblocks, of which 10 cutblocks were also harvested during the period.

Activities carried out by Skeena during the audit period were approved in its 1998-2005 forest development plan for TFL #1 and the 2000-2005 forest development plan for forest licence A64298.

Section 3.0 describes the audit of these activities and the results. The Board's audit reference manual, *Compliance Audit Reference Manual, Version 5.0, May 2001,* sets out the standards and procedures that were used to carry out this audit. In addition, specific additional tests were required to audit the requirements of the Agreement (Chapter 5 and appendix H).

3.0 Audit Findings

Planning and practices examined

The audit work on selected roads and cutblocks included ground-based procedures and assessments from the air using helicopters.

The audit examined:

- harvesting practices on 14 cutblocks
- construction of 4 bridges and 6.3 kilometres of road
- maintenance of 3 bridges and approximately 61.7 kilometres of active road
- 8.9 kilometres of permanent road deactivation and 6.0 kilometres of seasonal road deactivation
- silviculture activities and obligations on 14 cutblocks
- fire-preparedness planning and fire-preparedness measures at 6 active cutblocks

The obligations examined included the continuing road maintenance and silviculture obligations of TFL 1 that lie within the Nisga'a lands. In addition, the audit also examined Skeena's 2000 - 2005 forest development plan for the licence, including its compliance with Code, the Agreement and its appendices.

Findings

The audit found significant non-compliance in the area of planning and harvesting practices in riparian areas. In all other significant respects, Skeena's operational planning, timber harvesting, silviculture, fire protection and road construction, maintenance and deactivation complied with the Code and relevant sections of the Agreement.

The audit identified contraventions of riparian management requirements on 5 of 14 cutblocks examined. The key non-compliances identified were:

- Three cases were identified where portions of prescribed riparian buffers had been logged.

The riparian features were all adjacent to, rather than inside, cutblocks. In each case, loggers had logged to the marked boundary but the boundary was closer to the feature than prescribed in the silviculture prescription. The features were a small fish stream, a non-fish stream and a wetland. The harvesting that occurred was either within riparian

management zones (RMZs) or outside of the RMZ but within a larger prescribed buffer. There were no instances of harvesting within a riparian reserve zone. The total amount of timber logged in this way was 2,000 square metres. There was no damage to streams associated with these practices.

- Two cases were identified where riparian features had not been identified and classified.

One small non-fish stream and one small wetland had not been identified and classified. In each case, the practices that took place did not damage the feature and were within the range of practices acceptable for the correct riparian class.

The frequency of findings associated with riparian planning and practices indicates a problem in the planning and implementation of prescriptions that relates to three areas:

- Field marking of buffers that is inconsistent with prescription requirements.
- On–the-ground practices that were not modified in situations where field marking was clearly inconsistent with the prescription (e.g. along one small fish stream logging had occurred within ten metres of the stream, yet the prescription required a 20 metre buffer).
- Identification and classification of streams.

Although the findings were frequent in nature, the practices resulted in no specific damage to streams during the audit period. Technically, all of the above practices could have been approved in silviculture prescription amendments, had they been identified and submitted.

However, while this approach did not lead to specific damage during the audit period, there are clearly potential future repercussions associated with the current processes. In particular, the potential for logging to occur within the riparian reserve zones of fish streams. This risk was confirmed through examination of a small sample of unlogged areas where the audit identified that the marking ribbons on the riparian reserve zone of a medium size (S3) fish stream had been incorrectly positioned, such that a small portion of the reserve zone was within the proposed area to be logged.

Although each individual case of non-compliance was deemed to be not significant, the audit determined this non-compliance to be significant overall, due to the frequency of findings, and the related potential for further, more significant, damage to streams and riparian management areas in the future.

The main sections of the Code to which the non-compliance relates are sections 17, 51, 67 and 96 of the *Forest Practices Code of British Columbia Act* and section 39 of the *Operational Planning Regulation*.

It should be noted that subsequent to the audit, Skeena moved to reduce the risk associated with these practices by initiating a review of operational plans to identify and amend plans that contained inconsistent or inaccurate information. Such an exercise should substantially reduce the potential for future environmental damage associated with existing silviculture prescriptions.

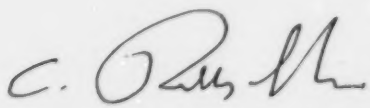
4.0 Audit Opinion

In my opinion, except for the significant non-compliance described below, the operational planning, timber harvesting, silviculture, fire protection and road construction, maintenance and deactivation activities carried out by Skeena Cellulose Inc. on Nisga'a lands complied in all significant respects with the requirements of the Code and the Agreement as of July 2001

As described in section 3.1, the audit found non-compliance with the riparian management requirements of the Code on 5 of 14 cutblocks examined. The non-compliance included unauthorized harvesting of small sections of riparian buffers within three riparian areas and failure to classify two riparian features (one non fish stream and one wetland).

In reference to compliance, the term "in all significant respects" recognizes that there may be minor instances of non-compliance that either may not be detected by the audit, or that are detected but not considered worthy of inclusion in the audit report.

Sections 2 and 3 of this report from the auditor describe the basis of the audit work performed in reaching the above opinion. The audit was conducted in accordance with the auditing standards of the Forest Practices Board. Such an audit includes examining sufficient forest planning and practices to support an overall evaluation of compliance with the Code and the Agreement.



Chris Ridley-Thomas, R.P.Bio
Auditor of Record

Vancouver, British Columbia
May 21, 2002

[i] A forest development plan is an operational plan that provides the public and government agencies with information about the location and scheduling of proposed roads and cutblocks for harvesting timber over a period of at least five years. The plan must specify measures that will be carried out to protect forest resources (including water, fisheries, and other forest resources). It must also illustrate and describe how objectives and strategies established in higher level plans, where they have been prepared, will be carried out. Site specific plans are required to be consistent with the forest development plan.

[ii] A silviculture prescription is a site specific operational plan that describes the forest management objectives for an area to be harvested (a cutblock). The silviculture prescriptions examined in the audit are required to describe the management activities proposed to maintain the inherent productivity of the site, accommodate all resource values including biological diversity, and produce a free growing stand capable of meeting stated management objectives. Silviculture prescriptions must be consistent with forest development plans that encompass the area to which the prescription applies.

D. Audit of Forest Planning and Practices: Sim Gan Forest Corporation

Board Report

This is the Board's report on a compliance audit of the activities and obligations of Sim Gan Forest Corporation (Sim Gan) on Nisga'a lands. On May 11, 2000, the effective date of the *Nisga'a Final Agreement* (the Agreement), Sim Gan's activities on Nisga'a lands were placed under a new forest licence, A64299. The audit covered Sim Gan's activities and obligations under the new licence, as well as residual silviculture and road maintenance obligations associated with forest licence A16886. Sim Gan's primary operating areas are north and west of the Nass River, extending approximately 10 kilometres up the Nass Valley from the community of Canyon City. As the Report from the Auditor explains (see page 31), the Agreement requires the Forest Practices Board to conduct annual audits of forest agreements and licences on Nisga'a land for a five-year transitional period, ending on May 10, 2005.

The Report from the Auditor provides further information on the nature of the Agreement, further details on the allowable annual cut, the scope of the audit, and the audit findings. The Report from the Auditor is based on the procedures described in Part II-A of this document.

The audit examined Sim Gan's operational planning (including forest development plans and silviculture prescriptions); timber harvesting; silviculture; fire-preparedness planning; and road maintenance and deactivation, for the period of May 11, 2000, to July 16, 2001. The audit examined these activities for compliance with both the *Forest Practices Code of British Columbia Act* and associated regulations (the Code) and the Agreement. Aside from completing harvesting on one cutblock, there were no active operations on the licence at the time of the audit. Subsequently, the audit of fire protection was limited to an assessment of fire-preparedness planning.

Before completing this report, the Board considered written submissions from Sim Gan, as well as the Report from the Auditor and supporting audit evidence. The Board affirms the auditor's findings and conclusions. Sim Gan's forest practices and planning were in compliance, in all significant respects, with the Agreement and Code requirements for operational planning, timber harvesting, fire preparedness planning, and silviculture activities. Sim Gan demonstrated significant non-compliance in the areas of road and bridge maintenance. Sim Gan failed to sufficiently maintain 15.6 kilometres of road on which it has maintenance obligations. Sim Gan further failed to satisfy Code standards for bridge inspection activities, as none of its bridges had formal inspection records. Sim Gan's

lack of road maintenance and formal bridge inspections significantly increases the risk to road-users and potential risk to related resources.

The audit also identified approximately 700 metres of unapproved excavated trail on Sim Gan's harvest block. Although the construction of this unapproved trail was not deemed to constitute significant non-compliance, the trail nonetheless disturbed approximately 0.35 hectares of soil.

The apparent cause of Sim Gan's instances of non-compliance was an insufficient understanding of its Code responsibilities relating to road maintenance and formal bridge inspections. The Board takes this opportunity to reinforce the necessity for licensees to be fully aware of their obligations under the Code before taking on the responsibilities of a licence.

The Board acknowledges that Sim Gan has since rehabilitated the unapproved excavated trail, and has initiated remedies to their inspection and maintenance procedures. The Board encourages Sim Gan's efforts to achieve sound forest management, and looks forward to assessing Sim Gan's planning and practices in subsequent Board annual audits on Nisga'a lands throughout the remainder of the five-year transition period.

W.N. (Bill) Cafferata, RPF
Chair, Forest Practices Board
July 29, 2002

Auditor of Record Report: Sim Gan Forest Corporation

1.0 Introduction

As part of the Forest Practices Board's 2001 compliance audit program, the activities and obligations of Sim Gan Forest Corporation (Sim Gan) on Nisga'a lands were audited as required by Chapter 5 – Section 55 of the *Nisga'a Final Agreement* (the Agreement). The Agreement requires the Forest Practices Board to perform compliance audits of forest practices on Nisga'a land in each year of a defined five-year transition period ending on May 10, 2005. During this period, annual audits must assess compliance with provincial forest practices legislation and the forestry-related requirements of the Agreement.

Historically, Sim Gan's activities on Nisga'a lands were managed under forest licence A16886. On the effective date of the Agreement (May 11, 2000), Sim Gan's activities on Nisga'a lands were placed under a new forest licence, A64299. The new licence is non-replaceable and expires at the end of the transition period. The allowable annual cut (AAC) for the new licence is approximately 14,000 cubic metres.

The audit covered Sim Gan's activities and obligations under the new licence, as well as residual silviculture and road maintenance obligations associated with forest licence A16886.

The Nisga'a lands are located in and around the Nass valley, which is approximately 100 kilometres northwest of the City of Terrace. Forest licences do not have specific borders within which activities take place. However, the current operating area for the licence is fairly well defined, with the primary areas of operation being north and west of the Nass River, extending up the Nass Valley from the community of Canyon City for approximately 10 kilometres.

Neither the Kalum Land and Resource Management Plan (LRMP) or higher level planning elements of the Forest Practices Code apply to activities on Nisga'a lands. Direction regarding key forest resources on Nisga'a land is derived from the Agreement and its appendices.

The Forestry Transition Committee and the Ministry of Forests, Kalum Forest District, which is part of the Prince Rupert Forest Region, jointly administer forestry activities on Nisga'a lands. The Forestry Transition Committee consists of the Kalum forest district manager and one person authorized by the Nisga'a Nation.

2.0 Audit Scope

The audit examined Sim Gan's activities and obligations related to operational planning (including forest development plans[i], and silviculture prescriptions[ii]); timber harvesting; silviculture; fire preparedness planning; and the maintenance and deactivation of roads. These activities were assessed for compliance with the *Forest Practices Code of British Columbia Act* and related regulations (the Code), and the Agreement. All activities, planning and obligations for the period May 11, 2000, to July 16, 2001, were included in the scope of the audit

The activities subject to audit, were:

- harvesting of one cutblock (harvesting commenced in 1999 but was completed during the audit period)
- maintenance of 5 bridges and approximately 15.6 kilometres of road, involving activities such as road surfacing and cleaning culverts and ditches
- silvicultural activities, such as planting, brushing and regeneration surveys on 9 cutblocks
- fire-preparedness planning

The activities carried out by Sim Gan during the audit period were approved in its 2000-2007 forest development plan for forest licence A16886. There is no approved forest development plan for the new licence, and no harvesting is currently planned.

Section 3.0 describes the audit of these activities and the results. The Board's audit reference manual, *Compliance Audit Reference Manual, Version 5.0, May 2001*, sets out the standards and procedures that were used to carry out this audit. In addition, specific additional tests were required to audit the requirements of the Agreement (Chapter 5 and appendix H).

2.1 Scope Restriction

The audit of fire protection was limited to an assessment of fire-preparedness planning, as there were no active operations at the time of the audit.

3.0 Audit Findings

Planning and practices examined

The audit work on roads and cutblocks included ground-based procedures and assessments from the air using helicopters. The audit examined:

- harvesting practices on 1 cutblock
- maintenance of 5 bridges and 15.6 kilometres of road
- silviculture activities on 7 cutblocks
- 1 fire-preparedness plan

The audit also examined Sim Gan's forest development plan and consistency with relevant parts of the Agreement.

Findings

The audit found significant non-compliance in the area of road and bridge maintenance. In all other significant respects, Sim Gan's operational planning, timber harvesting, fire preparedness planning and silviculture activities complied with the Code and relevant parts of the Agreement.

Road and Bridge Inspections and Maintenance

The audit identified a situation of significant non-compliance involving Sim Gan's road and bridge inspection and maintenance practices as follows:

- The audit found that Sim Gan did not sufficiently maintain the 15.6 kilometres of road for which it has maintenance obligations. The audit identified numerous unaddressed road maintenance obligations. Findings included minor cutslope failures, tension cracks on oversteepened fillslopes above a fish stream, a collapsed culvert and blocked and partially blocked culverts.
- The five bridges that Sim Gan is required to maintain were examined during the audit. While structural deficiencies were not noted in any of the bridges, none of the bridges had formal inspection records. The Code requires that all bridges be inspected by a qualified inspector at least every three years, and as frequently as every two years if constructed with untreated wooden structural components.

The lack of road maintenance and formal bridge inspections significantly increases the risk to road users and potential risk to associated resources.

The main sections of the Code to which the non-compliance relates are section 63(1) and (2) of the *Forest Practices Code of British Columbia Act* and sections 16(1), 17(1) and 18(1) and 18(2) of the *Forest Road Regulation*.

4.0 Other Comments

Inspection of Sim Gan's only harvest block identified approximately 700 metres of unapproved excavated trail. The excavated trail has not been rehabilitated and has disturbed approximately 0.35 hectares of soil.

The construction of the unapproved trail was not deemed to constitute significant non-compliance due to the lack of potential to affect other resources.

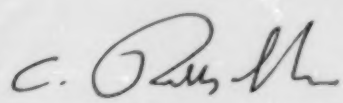
5.0 Audit Opinion

In my opinion, except for the significant non-compliance described below, the operational planning, fire preparedness planning, timber harvesting, silviculture and road maintenance activities of Sim Gan Forest Corporation on Nisga'a lands complied, in all significant respects, with the requirements of the Code and the Agreement as of July 2001, except as follows:

- Road maintenance and bridge inspection activities were not conducted to the standard required by the Code for the 15.6 kilometres of road on which Sim Gan has maintenance obligations.

In reference to compliance, the term "in all significant respects" recognizes that there may be minor instances of non-compliance that either may not be detected by the audit, or that are detected but not considered worthy of inclusion in the audit report.

Sections 2 and 3 of this report from the auditor describe the basis of the audit work performed in reaching this opinion. The audit was conducted in accordance with the auditing standards of the Forest Practices Board. Such an audit includes examining sufficient planning and forestry practices to support an overall evaluation of compliance with the Code and the Agreement.



Chris Ridley-Thomas
Auditor of Record

Vancouver, British Columbia
May 21, 2002

[i] A forest development plan is an operational plan that provides the public and government agencies with information about the location and scheduling of proposed roads and cutblocks for harvesting timber over a period of at least five years. The plan must specify measures that will be carried out to protect forest resources (including water, fisheries, and other forest resources). It must also illustrate and describe how objectives and strategies established in higher level plans, where they have been prepared, will be carried out. Site specific plans are required to be consistent with the forest development plan.

[ii] A silviculture prescription is a site specific operational plan that describes the forest management objectives for an area to be harvested (a cutblock). The silviculture prescriptions examined in the audit are required to describe the management activities proposed to maintain the inherent productivity of the site, accommodate all resource values including biological diversity, and produce a free growing stand capable of meeting stated management objectives. Silviculture prescriptions must be consistent with forest development plans that encompass the area to which the prescription applies.

E. Audit of Forest Planning and Practices: West Fraser Mills Ltd.

Board Report

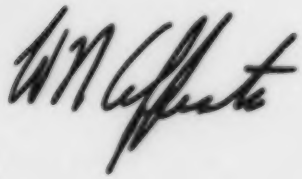
This is the Board's report on a compliance audit of a portion of Forest Licence A16882, held by West Fraser Mills Ltd. (West Fraser). West Fraser's activities on Nisga'a lands are managed as a portion of forest licence A16882, which extends approximately 25 kilometres down the Nass Valley from the Kinskuch drainage. As the Report from the Auditor explains (see page 39), the *Nisga'a Final Agreement* (the Agreement) requires the Forest Practices Board to conduct annual audits of forest agreements and licences on Nisga'a land for a five-year transitional period, ending on May 10, 2005.

The Report from the Auditor provides further details on the nature of the Agreement, the location of the licence, the scope of the audit, and the audit findings. The Report from the Auditor is based on the procedures described in Part II-A of this document.

The audit examined West Fraser's operational planning (including forest development plans and silviculture prescriptions); silviculture; fire-preparedness planning; and road and bridge maintenance for the period of May 11, 2000, to July 16, 2001. The audit examined these activities for compliance with both the *Forest Practices Code of British Columbia Act* and associated regulations (the Code) and the Agreement. However, since May 11, 2000, the effective date of the Agreement, West Fraser has not engaged in any harvesting or road construction activities on the licence. Subsequently, the activities carried out by West Fraser during the audit period related solely to outstanding silviculture and road-maintenance obligations for previously harvested sites. Given that there were no active operations at the time of the audit, the audit of fire protection was limited to an assessment of fire-preparedness planning.

The Board considered the Report from the Auditor, along with supporting audit evidence, and affirms the auditor's findings and conclusions. West Fraser's forest planning and practices were in compliance, in all significant respects, with the Agreement and Code requirements for road maintenance and deactivation; silviculture; operational planning; and fire-preparedness planning.

The Board encourages West Fraser's efforts towards achieving sound forest practices, and looks forward to reassessing West Fraser's planning and practices in subsequent Board annual audits on Nisga'a lands throughout the remainder of the five-year transition period.



W.N. (Bill) Cafferata, RPF
Chair, Forest Practices Board
July 29, 2002

Auditor of Record Report: West Fraser Mills Ltd.

1.0 Introduction

As part of the Forest Practices Board's 2001 audit program, the activities and obligations of West Fraser Mills Ltd. (West Fraser) on Nisga'a lands were audited as required by Chapter 5 – Section 55 of the *Nisga'a Final Agreement* (the Agreement). The Agreement requires the Forest Practices Board to perform audits of forest agreements and licences on Nisga'a land in each year of a five-year transition period ending on May 10, 2005. During this period, annual audits must assess compliance with provincial forest practices legislation and forestry-related requirements of the Agreement.

West Fraser's activities on Nisga'a lands are managed as a portion of forest licence A16882 (the licence). The portion of the licence on Nisga'a lands expires at the end of the transition period and is non-replaceable. West Fraser has not carried out any harvesting activity on the licence since the effective date of the Agreement on May 11, 2000, and no future harvesting or road construction is currently planned.

The Nisga'a lands are located in and around the Nass Valley, which is approximately 100 kilometres northwest of the city of Terrace. Forest licences do not have specific borders within which activities take place. However, the portion of the licence on Nisga'a land is fairly well defined, with the primary area of operation being west of the Nass River, extending down the Nass Valley from the lower Kinskuch drainage approximately 25 kilometres.

Neither the Kalum Land and Resource Management Plan (LRMP) or higher level planning elements of the Forest Practices Code apply to activities on Nisga'a lands. Direction regarding key forest resources on Nisga'a land is derived from the *Nisga'a Final Agreement* and appendices.

The Forestry Transition Committee and the Ministry of Forests, Kalum Forest District, which is part of the Prince Rupert Forest Region, jointly administer forestry activities on Nisga'a lands. The Forestry Transition Committee consists of the Kalum forest district manager and one person authorized by the Nisga'a Nation.

2.0 Audit Scope

The audit examined West Fraser's activities and obligations related to operational planning (including forest development plans[i], and silviculture prescriptions[ii]), silviculture, fire preparedness planning, and the maintenance of roads and bridges. Since the effective date of the Agreement, there have been no harvesting or road construction activities on the licence. The activities carried out by West Fraser during the audit period relate solely to

outstanding silviculture and road maintenance obligations for previously harvested sites. These activities were assessed for compliance with the *Forest Practices Code of British Columbia Act* and related regulations (the Code), and the Agreement. All activities, planning and obligations for the period May 11, 2000, to July 16, 2001, were included in the scope of the audit.

The activities subject to audit were:

- maintenance of 5 bridges and approximately 11.9 kilometres of road, involving activities such as road surfacing, cleaning culverts and ditches and seasonal deactivation
- silviculture activities such as planting, brushing and regeneration surveys on 42 cutblocks

Section 3.0 describes the audit of these activities and the results. The Board's audit reference manual, *Compliance Audit Reference Manual, Version 5.0, May 2001*, sets out the standards and procedures that were used to carry out this audit. In addition, specific additional tests were required to audit the requirements of the Agreement (Chapter 5 and appendix H).

2.1 Scope Restriction

The audit of fire protection was limited to an assessment of fire preparedness planning, as there were no active operations at the time of the audit.

3.0 Audit Findings

Planning and practices examined

The audit work on selected roads and cutblocks included ground-based procedures and assessments from the air using helicopters. The audit examined:

- maintenance of 3 bridges and approximately 4.9 kilometres of road, including 2.0 kilometres of seasonal deactivation
- silviculture activities on 6 cutblocks
- fire preparedness plans

The audit also examined West Fraser's 2000 - 2004 forest development plan, including its consistency with the *Nisga'a Final Agreement*.

Findings

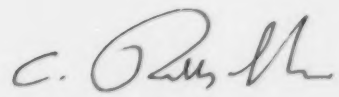
The audit found that West Fraser's forest planning and practices were in compliance, in all significant respects, with Code requirements for road maintenance and deactivation, silviculture, fire protection planning and operational planning.

4.0 Audit Opinion

In my opinion, the operational planning, silviculture, fire preparedness planning and road maintenance and deactivation activities carried out by West Fraser Mills Ltd. on Nisga'a lands complied in all significant respects with the requirements of the Code and the Agreement as of July 2001

In reference to compliance, the term "in all significant respects" recognises that there may be minor instances of non-compliance that either may not be detected by the audit, or that are detected but not considered worthy of inclusion in the audit report.

Sections 2 and 3 of this report from the auditor describe the basis of the audit work performed in reaching the above opinion. The audit was conducted in accordance with the auditing standards of the Forest Practices Board. Such an audit includes examining sufficient forest planning and practices to support an overall evaluation of compliance with the Code and the Agreement.



Chris Ridley-Thomas
Auditor of Record

Vancouver, British Columbia
May 21, 2002

[1] A forest development plan is an operational plan that provides the public and government agencies with information about the location and scheduling of proposed roads and cutblocks for harvesting timber over a period of at least five years. The plan must specify measures that will be carried out to protect forest resources (including water, fisheries, and other forest resources). It must also illustrate and describe how objectives and strategies established in higher level plans, where they have been prepared, will be carried out. Site specific plans are required to be consistent with the forest development plan.

[2] A silviculture prescription is a site specific operational plan that describes the forest management objectives for an area to be harvested (a cutblock). The silviculture prescriptions examined in the audit are required to describe the management activities proposed to maintain the inherent productivity of the site, accommodate all resource values including biological diversity, and produce a free growing stand capable of meeting stated management objectives. Silviculture prescriptions must be consistent with forest development plans that encompass the area to which the prescription applies.

III. Audit of the Government of British Columbia's Enforcement of the Forest Practices Code on Nisga'a Lands

III. Audit of the Government of British Columbia's Enforcement of the Forest Practices Code on Nisga'a Lands

Board Report

Introduction and Scope

Three ministries have primary enforcement authority under the *Forest Practices Code of British Columbia Act* and regulations (the Code) — Forests (MOF); Water, Land and Air Protection (MWLAP);[1] and Energy and Mines (MEM). The Forest Practices Board is required to carry out periodic independent audits of the appropriateness of government enforcement under part 6 of the Code. In addition, the *Nisga'a Final Agreement* (the Agreement) requires the Board to perform compliance audits of forest practices and audits of the appropriateness of government's enforcement of the Code on Nisga'a lands each year during a five-year transition period ending on May 10, 2005.

In June 2000, the Board developed eight criteria against which the appropriateness of government's enforcement of the Code would be assessed. The criteria are found in the document *Enforcement Audit Program, Outline of Technical Approach.*[2] Public and government agency input was solicited in the preparation of this material.

As part of the Board's 2001 audit program, the Board conducted an audit of the appropriateness of government enforcement on Nisga'a lands, as directed by the Agreement.

The Nisga'a territory is located in the Kalum and North Coast Forest Districts, and in the Skeena Region of MWLAP, with the western border approximately 100 kilometres northwest of the city of Terrace. There are three major forest licensees, as well as operations under the MOF's Small Business Forest Enterprise Program (SBFEP). The primary operating area for these licensees is in the area surrounding the lower Nass River.

All three Code ministries were included in the scope of the audit. However, the Ministry of Energy and Mines had no Code-related enforcement activities to assess during the audit

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[1] The Ministry of Environment, Lands and Parks held responsibility for MWLAP's Code enforcement prior to July 2001.

[2] This document is located on the Board web site: http://www/REPORTS/AUDITS/eap/eap-01.htm

period. The Nisga'a Agreement also established a Forest Transition Committee (FTC) to jointly approve forest development plans during the five-year transition period. The FTC consists of the Kalum Forest District Manager and one person authorized by the Nisga'a Lisims Government.

The Board has determined that the scope of enforcement subject to audit includes both compliance and enforcement activities. Compliance activities primarily include planning, conducting and reporting inspections of Code practices. Enforcement activities include investigations and determinations. The field portion of the audit was carried out in July 2001 and included extensive interviews of compliance and enforcement staff, as well as field and office reviews of inspections and investigations, and evaluation of policies, processes and controls both within and between the ministries. Compliance and enforcement activities related to timber harvesting; construction, maintenance and deactivation of roads; silviculture; and fire protection undertaken between May 11, 2000, and July 16, 2001, were audited.

Summary of Audit Conclusions

For the Ministry of Forests, Kalum Forest District on Nisga'a lands:

The district's enforcement of the Code was appropriate in the following areas:

- The district obtains, uses and maintains adequate information on planned harvesting activities on Nisga'a lands subject to enforcement. However, the district is not sufficiently aware of all forest activities in progress, especially in relation to silviculture activities on older harvest blocks, and roads and bridges that are not within harvest cutblocks.

- The district uses an effective process in its risk assessment of forest activities subject to compliance and enforcement, but is deficient in the application of risk-assessment information in planning, prioritizing and conducting inspections.

- The district and the Forest Transition Committee appropriately established expectations for forest operators in accordance with provisions of the *Nisga'a Final Agreement* and the Code.

The district's Code enforcement was not appropriate in certain areas where significant weaknesses were identified by the audit:

- Significant deficiencies exist in the conduct of inspections, particularly in the identification of Code non-compliances and follow-up actions. In addition, reporting and documentation of inspections was not adequate in enabling an effective review of inspection results or in activating potential follow-up.

- The one investigation that the audit reviewed was performed in a fair, objective and consistent manner, and was accurately recorded and reported. Due to deficiencies in inspection coverage, conduct and reporting, the audit was unable to determine if investigations and determinations are occurring in all applicable situations.

- Although MOF adequately identified expectations for its compliance and enforcement performance relative to harvesting activities, the measures used are not sufficient to guide and assess overall compliance and enforcement performance, especially in relation to Code enforcement of silviculture activities on older harvest blocks, and activities on roads and bridges that are not within harvest cutblocks.

In addition, the Board concludes that MOF's new compliance procedures—which are partially developed and were not in use in the district during the audit period—may contribute significantly to improvements in district inspection, planning and documentation when fully implemented. The Board looks forward to audit results that demonstrate the success of the procedures in meeting these objectives.

For the Ministry of Water, Land and Air Protection, Skeena Region on Nisga'a lands:

MWLAP's compliance and enforcement of the Code does not include a compliance monitoring role on Nisga'a lands in the Kalum district. MLWAP staff rely on MOF staff to identify potential non-compliances that affect water, fish and wildlife values for which MWLAP has direct responsibility. This limited participation by MWLAP in Code enforcement is not appropriate.

Overall, MWLAP's failure to participate in Code enforcement diminishes the effectiveness of enforcement of the Code and environmental monitoring of forestry operations on the Nisga'a lands.

Overall Conclusions

The Board considered the Report from the Auditor (attached), along with supporting audit evidence, oral representations from the Ministry of Forests (Kalum Forest District), and written representations from MWLAP (Skeena Region) in preparing this report. The Board affirms the auditor's conclusions regarding the appropriateness of government's enforcement of the Code on the Nisga'a lands.

The Kalum Forest District made three main points during oral representations to the Board. The Board has considered the district's concern regarding the audit process and acknowledges that the communication of consolidated field findings from the compliance and enforcement audits can be improved at the various stages of audit review and response. However, although there were discrepancies between the number of non-

compliances noted in the enforcement audit report and in the four compliance audit reports on forest practices and planning on the Nisga'a lands, the overall statements of findings of the enforcement audit are sufficient for the Board to confirm that the overall conclusions reached by the enforcement audit are accurate.

Overall, the Board concludes the following for the period of May 11, 2000, to July 16, 2001:

The audit found that, even though two BC government agencies – MOF and MWALP – could be involved in Code enforcement in the audit area, formal Code enforcement is only performed by MOF and no systematic coordination exists between the agencies to achieve Code purposes. This is neither appropriate nor consistent with the government's stated expectations. Although it is appropriate that MOF assumes a lead role in compliance and enforcement activities relating to the Code, it is still important that MWLAP continue to monitor MOF compliance and enforcement performance and apply its own enforcement mandate and resources as may be required. As a result of shortcomings in interagency coordination, there is significant potential for gaps in government's enforcement of the Code on the Nisga'a lands, particularly as it relates to environmental impacts of forestry operations.

The Board recognizes the public's valid expectation of an effective government compliance and enforcement (C&E) program, one that ensures that forest practices meet Code requirements and takes appropriate enforcement action where Code requirements are not met. It also recognizes that government's mandate for compliance and enforcement is broader than the Code and, thus, MOF and MWLAP management must make challenging decisions on allocation of resources to address their full range of responsibilities. Similarly, MOF district staff responsible for the compliance and enforcement functions must attend to a wide range of responsibilities when conducting their work. Thus, it is important that the C&E function is undertaken in a well-planned and well-ordered manner to ensure effectiveness and the efficient use of scarce resources.

The Board wishes to express its concern with the frequent number of minor non-compliances, specifically related to harvesting practices and planning in riparian areas, that were not identified by the MOF compliance and enforcement inspections on Nisga'a lands. The Board is particularly concerned with the potential for significant harm to the environment due to the dispersed but cumulative impacts to riparian areas and water quality as a result of these minor, but frequent, non-compliances not being addressed by compliance and enforcement staff.

Even though deficiencies in the district's compliance and enforcement inspection process have been identified, the Board would like to emphasize that the district has sufficiently resourced enforcement of the Code for higher risk activities on Nisga'a lands to ensure that no significant environmental harm occurred during the period May 11, 2000, to July 18, 2001.

Recommendation

The Board is aware of the potential for changes to the present model through which government enforces the Code. Some of the factors that may influence it are:

- the results-based Code legislation;
- the government's core services review, which has identified and confirmed the government's core roles and responsibilities; and
- a potential reduction in resources available to conduct government's compliance and enforcement activities.

With these considerations in mind, the Board emphasizes that its recommendation may require implementation in a different manner than can be foreseen at present to ensure that its objectives are achieved. Accordingly, as provided by section 185 of the Act, the Board makes the following recommendation:

> The Ministry of Water, Land and Air Protection should take a more proactive approach to its enforcement role under the Code by undertaking periodic reviews to ensure that the Ministry of Forests is reporting environmental concerns as listed in Appendix B of the Memorandum of Understanding signed in April 1995 between the MOF Prince Rupert Forest Region, MWLAP Skeena Region, and the Ministry of Energy and Mines Northwest Region.

In accordance with section 186 of the Act, the Board requests that the Ministry of Water, Land and Air Protection, Skeena Region advise the Board by March 31, 2003, of the actions taken to address this recommendation.

The Board encourages the Ministry of Forests, Kalum Forest District and the Ministry of Water, Land and Air Protection, Skeena Region in their efforts towards achieving sound forest management on Nisga'a lands, and looks forward to reassessing the appropriateness of government's enforcement of the Code in subsequent Board audits on Nisga'a lands

W.N. (Bill) Cafferata, RPF
Chair, Forest Practices Board
July 29, 2002

Auditor of Record Report – Code Enforcement

1.0 Introduction

Section 176(b) of the *Forest Practices Code of British Columbia Act* (the Act) directs the Forest Practices Board (the Board) to carry out periodic independent audits of the appropriateness of government enforcement under the *Forest Practices Code of British Columbia* Act and related regulations (the Code). Three ministries have authority for Code enforcement — the Ministries of Forests (MOF); Water, Land and Air Protection (MWLAP); and Energy and Mines (MEM).

The *Nisga'a Final Agreement* (the Agreement) requires the Forest Practices Board to perform compliance audits of forest practices, and audits of the appropriateness of government's enforcement of the Code, on Nisga'a lands each year during a defined five-year transition period ending on May 10, 2005. As part of the Board's 2001 audit program, the Board conducted an audit of the appropriateness of government enforcement on the Nisga'a lands, as directed by Chapter 5 – Section 55 of the Agreement.

The Nisga'a territory, involving a settled treaty area of approximately 199,000 hectares, covers approximately 850,000 hectares in the Kalum and North Coast Forest Districts — and in the Skeena Region of MWLAP — with the western border approximately 100 kilometres northwest of the city of Terrace. There are three major licensees and operations under the Small Business Forest Enterprise Program (SBFEP). Although forest licences do not have specific borders within which activities take place, the portion on Nisga'a land is fairly well defined, with the primary area on the lower Nass River and extending down the Nass Valley. The allowable annual cut (AAC) in the audit area for the first year of the five-year transition period was approximately 155,000 cubic metres.

The Nisga'a Agreement required the establishment of a Forest Transition Committee (FTC) to jointly approve forest development plans during the five-year transition period and to approve other permits on a phased-in basis. The FTC consists of the Kalum Forest District Manager and one person authorized by the Nisga'a Lisims Government.

Neither the Kalum Land and Resource Management Plan nor higher-level planning elements of the Forest Practices Code apply. Direction regarding key forest resources on Nisga'a lands is derived from the *Nisga'a Final Agreement and Appendices*.

2.0 Scope and Approach

The audit examined government's planning, management direction and operational activities related to enforcement of the Code for timber harvesting; road construction, maintenance and deactivation; fire protection; and silviculture activities on Nisga'a lands

for the period May 11, 2000, to July 16, 2001. This involved examining the compliance and enforcement (C&E) activities mandated to the MOF Kalum Forest District and the MWLAP Skeena Region in relation to those forest activities carried out by licensees during the audit period and subject to government enforcement.

The audit was performed using criteria developed to assess three broad aspects of government enforcement — the design of the C&E organization and business processes; their application in practice through sampling both compliance and enforcement 'transactions' in a number of forestry areas; and the management framework used to direct, support, monitor and report on C&E activity.

Audit Criteria

In assessing the appropriateness of government's enforcement of the Code, the following main assessment criteria were applied:

- Government agencies obtain, use and maintain adequate information on the forest activities subject to compliance and enforcement.
- Government agencies have an effective way of identifying risks associated with forest activities and utilizing risk in inspection planning.
- Government agencies conduct a sufficient number of inspections, in a fair, objective and effective way, and accurately record and report results.
- Investigations and determinations are carried out in all applicable situations and only when warranted; they are performed in a fair, objective and consistent way, and are accurately recorded and reported.
- Government agencies establish, through operational plan approval and related processes, expectations for forest practices that are enforceable and in accordance with the Code.
- There are established organizational structures, policies and processes that contribute to and support appropriate enforcement of the Code.
- The decisions and actions of different parts of government responsible for enforcement of the Code are appropriate and coordinated.
- Reporting systems provide adequate information on agency performance in relation to enforcement objectives.

Candidate Activities

The activities carried out during the audit period, and therefore subject to audit examination, included both the forest activities of major licensees and the SBFEP and the compliance and enforcement activities of government agencies in relation to these forest activities.

Forest activities of major licensees and the SBFEP subject to compliance and enforcement included:

- harvesting of 15 cutblocks
- construction of 11 bridges, construction of new roads totaling 18.9 kilometres, and planned roads totaling 5.6 kilometres
- maintenance of 22 bridges, approximately 253.1 kilometres of road, and approximately 22 kilometres of seasonally deactivated roads
- deactivation of roads totaling 25.4 kilometres
- silviculture activities and obligations on 138 cutblocks
- protection tools and infrastructure at active work sites
- operational planning, including silviculture prescriptions for 9 planned cutblocks

Government compliance and enforcement activities included:

- the design of the compliance and enforcement organization and business processes
- the planning, conduct, recording and reporting of compliance and enforcement activity related to harvesting, roads, silviculture, and fire protection
- the systems and processes used to manage C&E activity

The majority of C&E activities were performed by the MOF Kalum Forest District (the district). During the audit period, the district was mandated to conduct inspections of the forest practices of major licensees and of the forest practices of small business licensees and operators. The audit did not assess C&E activity by the North Coast Forest District since no forest activities were active in those areas of that district within the Nisga'a lands.

The MWLAP does not apply the Code as the basis for its C&E functions nor does it conduct a program of inspections of forest activities; instead, considerable reliance is placed on MOF for these functions. The audit examined the appropriateness of this arrangement in relation to MWLAP's responsibilities for water, fish, wildlife and other biodiversity values.

The audit did not assess C&E activity by the Ministry of Energy and Mines because no mining activity involving Code compliance was carried out in the Nisga'a lands during the audit period.

Audit Work and Activities Examined

The audit work involved extensive interviewing of agency staff; reviewing and evaluating policies, processes, approvals and controls within and between agencies; office-based review of enforcement records and systems; and field examination on the ground and from the air, using helicopters, of selected harvesting, roads and silviculture activities.

3.0 Summary of Conclusions

The audit examined the compliance and enforcement organization and activities of the agencies with Code enforcement responsibilities on the Nisga'a lands for the period May 11, 2000, to July 16, 2001.

Even though two BC government agencies — the Ministry of Forests and the Ministry of Water, Land and Air Protection — could be involved in Code enforcement in the audit area, formal Code enforcement is only performed by MOF. This is neither appropriate nor consistent with the Government's expectations in its implementation of the Forest Practices Code legislation.

Memoranda of Understanding (MOUs) have been drafted to reflect the intention of a unified Code enforcement; however, no systematic coordination exists between agencies to achieve this purpose. Although it is appropriate that MOF assumes a lead role in C&E, it is still important that MWLAP — under its own environmental protection mandate and through the application of its associated professional competencies — continue to monitor MOF C&E performance and apply its own enforcement mandate and resources as may be required.

As a result of shortcomings in interagency coordination, there is a significant potential for gaps in government's enforcement of the Code on the Nisga'a lands, particularly as it relates to environmental impacts of forestry operations.

Ministry of Forests

The Kalum Forest District is, in many respects, appropriately enforcing the Code on the Nisga'a lands and has set an appropriate objective for its compliance and enforcement program — to promote compliance with the Code. However, there remain some weaknesses that require improvement in order to achieve a fully-appropriate enforcement of the Code.

The Kalum Forest District's Code enforcement is appropriate in the following areas of C&E performance:

- obtains, uses and maintains adequate information on planned activities on Nisga'a lands subject to enforcement
- applies an effective process for the assessment of risk associated with harvesting activities
- appropriately establishes expectations for forest operators in accordance with both provisions of the *Nisga'a Final Agreement* and the Forest Practices Code, directly and through participation in the Forest Transition Committee

However, the district's Code enforcement was not appropriate in certain areas where significant weaknesses were identified by the audit:

- Deficiencies exist in the conduct of inspections, particularly in the identification of potential Code non-compliances and their follow up. In addition, reporting and documentation of inspection conduct was not adequate in enabling an effective review of inspection results or in activating potential follow-up.
- Due to deficiencies in inspection coverage, conduct and reporting, it is not clear that investigations and determinations are occurring in all applicable situations.
- District management does not systematically address the adequacy of C&E performance in the field, and accountability measures and monitoring are not sufficient to guide and assess overall C&E activity.

Ministry of Water, Land and Air Protection

MWLAP has chosen not to apply the Code as a basis for its C&E mandate and activity and, even though the ministry — through its participation in the review and approval of forest development plans — has a mandate to attend to forest activities subject to enforcement, this is not applied at the site level nor monitored as the plans are implemented. This limited participation of MWLAP in Code enforcement is not appropriate, either in relation to direct C&E involvement on the ministry's part or in monitoring and influencing site-specific forest practices overseen by the MOF as the lead Code enforcement agency.

Overall, MWLAP's failure to participate in Code enforcement — if only to actively seek and apply site-specific information for application to its wider enforcement mandate and to support or influence MOF's lead role in Code enforcement — diminishes the effectiveness of environmental monitoring and assessments relative to forestry operations on Nisga'a lands.

Ministry of Energy and Mines

The audit did not assess C&E activity by the Ministry of Energy and Mines since no mining activity involving Code compliance was carried out in the area during the audit period.

4.0 FINDINGS AND CONCLUSIONS

The detailed findings and conclusions of the audit are set out in this section, and organized by eight main assessment criteria.

4.1 Criterion: *Government agencies obtain, use and maintain adequate information on the forest activities subject to enforcement.*

In order to undertake compliance and enforcement activities with assurance that the right activities are being examined, the ministries must be informed of the forest activities taking place in the area subject to enforcement action. If the agencies are not aware of activities in the field, there is little chance that the activities will be inspected, and there is an increased chance that non-compliance with the Code will not be identified and addressed.

It should be noted that the Code itself does not require licensees to notify government of the commencement of forest practices, although government agencies may establish agreement on the part of licensees to inform of activities.

The audit assessed whether government agencies have systems in place whereby they obtain, use and maintain sufficient information about forest activities to enable an effective monitoring and inspection program.

Ministry of Forests

Although there is no formal notification or reporting system in place to inform MOF of forestry activities in-progress on the Nisga'a lands, the district generally establishes and maintains adequate information to plan and monitor such activity.

Initially, the Kalum district obtains information concerning planned activities from its review of operational plans such as forest development plans and silviculture prescriptions, as well as cutting permits and road permits. A clearing-house approvals committee receives and assesses information on planned activities and involves staff with the required expertise in harvesting, roads, silviculture, operational planning and resource management.

In applying this information in the field, the assigned zone officer maintains a regular presence on the Nisga'a lands and has developed informal processes, generally dependent on licensee cooperation and largely of an observational nature, to keep informed on in-

progress work in relation to harvesting and on-block roads. However, for off-block roads and bridge maintenance, the audit noted lesser awareness of maintenance and inspection responsibilities.

For silviculture activities, due to historic problems with identifying all data, the district was uncertain whether complete and accurate recording of all licensee silviculture obligations had been achieved.

Ministry of Water, Land and Air Protection

Although the ministry can define some planned activities of interest through its participation in the review of forest development plans (FDPs) submitted by licensees, there is no systematic access by MWLAP to site-level information on forest activities on Nisga'a lands other than at the FDP planning phase.

The ministry's forestry ecosystem specialist (FES) is generally aware of licensee proposals through involvement in FDP reviews but does not normally participate in reviews of site-specific plans and permits.

Conclusions

This criterion was partially achieved by government agencies.

The Kalum Forest District obtains, uses and maintains adequate information on planned activities on Nisga'a lands subject to enforcement. However, the district is not sufficiently aware of all in-progress forest activities, especially in relation to off-block roads, bridges and silviculture.

The Skeena Region of MWLAP does not obtain adequate information on those forest activities performed on Nisga'a lands and subject to its potential enforcement role and responsibilities.

4.2 Criterion: *Government agencies have an effective way of identifying risks associated with forest activities and utilizing risk in inspection planning.*

Once government agencies have determined the activities eligible for inspection, they need an effective method of determining where to apply their inspection efforts. Because they cannot inspect all forest activities conducted by all parties, they need a way to allocate their resources to minimize the risk that impacts to the environment may not be detected.

The audit assessed whether government agencies have an effective process for identifying risk and uses information on risk to target inspection efforts on higher-risk activities and

phases of operations. This criterion was examined at both the program management and site-specific inspection planning levels.

Ministry of Forests

The district has established a clearing house committee – composed of planning, supervisory, and field officials — to apply systematic reviews of operational plans and permits. This process is also applied to effectively identify and assess potential risk in relation to most forest activities. These ratings are recorded and are expected to be applied in the overall planning, prioritization and conduct of the district's inspections of forest activities.

However, these risk assessments have not generally governed the prioritization and conduct of all potential inspections on Nisga'a lands. Overall, harvesting activities were the predominant focus of inspections, with those activities considered by the district as moderate risk receiving as many or more inspections than those considered high risk, without sufficient justification for the increased inspection levels. For SBFEP activities, risk is addressed through the district's regular project management presence.

As a result, the district is generally unable to demonstrate that risk assessments are driving inspection activity; consequently, certain activities — primarily off-block roads, bridges and silviculture — did not receive commensurate C&E attention during the audit period.

Ministry of Water, Land and Air Protection

Although MWLAP — through its participation in the review of forest development plans — has available to it full access and input in identifying and assessing risk to forest resources, this is not applied to enforcement of Code provisions nor to the ministry's own C&E mandate. Further, the MWLAP Skeena Region does not conduct an inspections program and, thus, does not pre-consider risk in the conduct of its overall enforcement program.

Conclusions

This criterion was partially achieved by government agencies, with an effective process being applied by the Kalum Forest District in its risk assessment of forest activities subject to C&E, but with deficiencies in the application of risk-assessment information in inspection planning, prioritization and conduct. In effect, the district is unable to demonstrate that risk considerations substantially direct its inspection activity on Nisga'a lands.

4.3 Criterion: *Government agencies conduct a sufficient number of inspections, in a fair, objective and effective way, and accurately record and report results.*

The effective conduct of inspections enables government agencies to assess the results of forest activities, identify potential contraventions of the Code and initiate both corrective and enforcement actions. Weaknesses in inspections reduce government's ability to appropriately enforce the Code.

The audit assessed key features relevant to the appropriate conduct of inspections:

- whether staff responsible for the conduct of inspections fully prepare for each inspection
- whether an adequate number of inspections are performed in relation to those forest activities subject to C&E
- whether inspections address the main risks in each activity examined
- whether inspections observe and recognize potential Code contraventions and their results
- whether documentation of inspections is clear and sufficient, including conclusions about compliance or non-compliance and any follow-up action required

In the 2001 Nisga'a audits, the Board conducted compliance audits of three major licensees and the SBFEP. Findings of these audits also established a baseline for assessment of the inspection performance of government agencies in relation to selected forest activities and sites. For instance:

- Approximately 50 instances of non-compliance were identified by the compliance audits in relation to licensees' forest activities for harvesting, roads, bridges and silviculture. Although many were determined to be minor in nature, a number were identified by the compliance auditors as potentially significant non-compliances.
- Issues of non-compliance were identified in 11 of 17 cutblocks examined during the audits. All findings related to planning and practices in riparian areas.
- Non-compliance issues were identified in relation to 11 of 13 bridges examined by the compliance audits.

Ministry of Forests

Although the Kalum district performed over 100 inspections on Nisga'a lands during the audit period, exceeding identified district monitoring-plan levels, some activities received fewer inspections than required. Generally, while the district is conducting more harvesting-block inspections than required by district and ministry standards, forest activities in relation to off-block roads, bridges and silviculture received significantly fewer inspections than may be required.

Specifically, inspections were reported for 100 percent of harvesting activities but only about 20 percent of road activities. Although a planned level of silviculture inspections was identified, none were conducted during the audit period.

The audit found significant weaknesses in the quality of the district's inspections:

- None of the Code non-compliance issues identified by the Board compliance audits were reported as either actual or potential non-compliances by the district, resulting in no definable action being taken. For example, where the compliance audits identified situations where roads had been constructed in riparian management areas, district field inspections did not identify these situations of Code non-compliance.

- Deficiencies prevailed in the documentation of the inspections carried out. Identification and description of features inspected was generally limited to column checkmark designations indicating "Yes", "No" or "Follow-up required" regarding compliance. Where required follow-up was indicated, the rationale and expected follow-up was generally undefined, contrary to procedural directions for inspection reporting and documentation.

Essentially, in these cases the district either did not recognize non-compliance, did not treat it as a Code non-compliance, determined it to be inappropriate for enforcement, or viewed it as too minor to warrant identification. The compliance audits found a number of incidents of non-compliance that were deemed not minor in nature, but the district's approach resulted in there being no attention whatsoever to these same non-compliances. Although forest officials must apply judgment in their C&E performance, these deficiencies in making non-compliance calls reflected a fundamental weakness in the district's treatment of Code compliance and non-compliance. In effect, the district did not adequately address the potential of pervasive non-compliance and the consequent risk of future adverse impact.

In response to these findings, the district has reported its post-audit implementation — or intention to implement — of a number of changes to its C&E procedures, many developed as part of ministry-wide adjustments to compliance policy and procedures:

- Annual adoption of a district inspection plan (DIP) to prioritize inspection activities, and to establish and provide a rationale for inspection objectives. The DIP will cover inspections for all forest activities of major licensees and SBFEP including harvesting, roads and silviculture. All activities will be risk-assessed, including silviculture and off-block roads, and the DIP will be reviewed quarterly if risks or resources have changed to such an extent that inspection objectives are no longer realistic.

- Application of a compliance inspection management system (CIMS) to provide a ministry-wide database for tracking inspections and monitoring progress in achieving DIP objectives.

- Application of updated inspection forms for all forest activities, designed to clearly show if follow up is required, when it should take place and areas needing further examination.

- Communication to licensees to address non-compliances identified by the audit — and defined by the district as unenforceable — as a result of errors in operational plans or in cutblock layout and boundary marking.

- Ministry adoption of a new organizational structure for SBFEP compliance and enforcement whereby C&E officials, not SBFEP technicians, will conduct inspections on SBFEP operations.

These measures, if implemented effectively, will respond significantly to issues identified in this audit, particularly within this criterion.

Ministry of Water, Land and Air Protection

MWLAP does not conduct a program of periodic field inspections, nor does it apply the Code as the basis for its enforcement activity. In the absence of periodic inspections, the ministry relies on referrals from the MOF and complaints from the public to identify potential contraventions. The ministry — primarily through its conservation officer service — limits its enforcement activity to the performance of investigations initiated through agency referrals or public complaints.

Conclusions

This criterion was only partially achieved by government agencies, with significant deficiencies in the conduct of inspections by the Kalum Forest District, particularly in the identification of Code non-compliances and follow-up actions. Overall, inspection reporting and documentation was not adequate in enabling an effective review of inspection results or in activating potential follow up.

Although more than adequate inspection coverage was performed for harvesting activities, the district did not conduct a commensurate number of inspections relative to off-block and non-harvesting activities — specifically, roads, bridges and silviculture.

4.4 Criterion: *Investigations and determinations are carried out in all applicable situations and only when warranted. They are performed in a fair, objective and reasonable way, and are accurately recorded and reported.*

Investigations are the primary tool for an in-depth examination pursuant to the identification of a suspected or alleged contravention of the Code. In many cases, the investigations will result from completion of an inspection, but they also can be initiated through other means, such as public complaints or licensee self-reporting.

The audit assessed whether investigations, and any subsequent determinations, are carried out in all applicable situations, are conducted fairly and objectively, and are accurately recorded and reported.

Ministry of Forests

There were only two investigations considered by the district during the audit period. One was completed and, in the other, the district had not yet determined whether an investigation was warranted. As a result, the audit did not review this case. A sample of one is generally considered to be too small to provide meaningful conclusions about investigation processes, therefore the audit's comments about investigation processes will be qualified.

In the one investigation assessed by the audit, the investigation was warranted, carried out with reasonable efficiency and well-documented. The formal determination was performed in accordance with the requirements of the Code and the process was based on established and reasonable practices carried out and supervised by experienced staff.

However, as described under criterion 4.3, the compliance audits identified several situations that warranted follow-up action, but the inspector did not determine that a non-compliance had occurred nor that follow-up was required. Thus, due to deficiencies in inspections, the audit was unable to assess whether investigations were carried out in all applicable situations.

Ministry of Water, Land and Air Protection

Although issues of Code compliance may be referred to MWLAP, the Ministry does not apply the Code as the basis for its enforcement investigations or determinations and thus

was not involved in investigations of potential contraventions of the Code during the audit period.

Conclusions

The one investigation that the audit reviewed was performed in a fair, objective and consistent way, and was accurately recorded and reported.

However, due to deficiencies in inspection planning, conduct and reporting, the audit was unable to determine if investigations and determinations are occurring in all applicable situations.

Since MWLAP does not conduct Code inspections and expects the district to inform of or investigate Code infractions directly, including those also falling within the mandate and expertise of MWLAP, there exists a risk that MWLAP investigative responsibilities are not being adequately applied.

4.5 Criterion: *Agencies establish, through operational plan approval and related processes, expectations for forest practices which are enforceable and in accordance with the Code.*

Through operational plan approvals and related processes, district managers and designated environment officials — and, in the case of the Nisga'a lands, the Forest Transition Committee — establish rules and expectations for licensee performance that can have a major influence on licensee behavior.

The audit assessed whether prescriptions and provisions in approved operational plans (forest development plans and silviculture prescriptions) are clear, unambiguous, enforceable and in accordance with the significant requirements of the Code.

Ministry of Forests

The Kalum LRMP and higher level planning under the Forest Practices Code do not apply to the Nisga'a lands. When the Provincial government ratified the Nisga'a treaty, settlement lands were removed from the Kalum LRMP process. However, the Forest Practices Code does apply to licensee activity during the transition period. Specific expectations for forest practices on Nisga'a lands regarding forest practices around key forest resources on Nisga'a lands, as referenced in the *Nisga'a Final Agreement*, are incorporated into any new or operational permits and amendments to those that have been grandfathered into the transition period.

The Forest Transition Committee is responsible for the approval of FDPs applicable to Nisga'a lands. Since the committee has not yet established its own process to set expectations for forest practices, the committee relies on the district to perform all planning review support preparatory to FTC approvals.

Ministry of Water, Land and Air Protection

MWLAP — through its review of forest development plans — can significantly influence the conduct of forest activities subject to enforcement. However, this attention has not been applied to site-specific stages of approvals such as silviculture prescriptions. There are no formally established processes for communications between MWLAP and forestry operators. In general, the ministry has limited involvement in setting site-level expectations for forestry operators.

Conclusions

This criterion was partially achieved by government agencies.

The Kalum Forest District and the Forest Transition Committee appropriately established expectations for forest operators in accordance with both provisions of the *Nisga'a Final Agreement* and the Forest Practices Code.

The participation of MWLAP is inadequate in identifying and influencing site-specific issues and practices, specifically in relation to various environmental values within the ministry's core mandate and expertise.

4.6 Criterion: *There are established organizational structures, policies and processes that contribute to and support appropriate enforcement of the Code.*

Effective organizational structure, policy, management direction, staffing, training and resourcing are necessary in order for government agencies to appropriately enforce the Code.

The audit assessed whether the organizational model and management practices adopted by government agencies supports the effective enforcement of the Code and whether sufficient policy direction exists to guide and support agencies' C&E programs.

Ministry of Forests

The Kalum district operates under a zonal organization model in which C&E responsibility is assigned to one or more designated officers per zone area. However, for the Nisga'a

lands, C&E for the SBFEP, bridges and silviculture is conducted independently from the C&E zone staff.

In effect, the model applied is a partial C&E zone model, mostly focused on harvesting and on-block activities. The decision to administer SBFEP and silviculture C&E separate from the zone officer's role has resulted in an incongruent administration of C&E on Nisga'a lands and an unfocused C&E attention to these programs. Communication gaps exist between the staff of these different programs, particularly in relation to C&E for roads and bridges.

SBFEP and silviculture program staff are responsible for C&E of their programs. In this model, staff may not be sufficiently independent to provide, or appear to provide, objective and fair assessments of the compliance of SBFEP activities and any required enforcement actions. In effect, staff are not performing C&E activities; rather, their monitoring is more in the form of program or supervisory review. There should be, at a minimum, a periodic review of inspection frequency and results by the independent C&E function.

Ministry of Water, Land and Air Protection

MWLAP participates in Code C&E through the front-end review and comment by forest ecosystem specialists on forest development plans. The Terrace-based FES participates in forest development plan reviews, but with limited attention to site-specific plans. However, there is little other involvement in Code C&E. Conservation officers have a significant enforcement mandate but do not conduct either Code inspections or investigations.

Conclusions

This criterion was partially achieved by government agencies.

Although organizational structures and resources have been established in each of the responsible government agencies, and have resulted in effective extensive C&E coverage for harvesting activities, management direction has not ensured an appropriate focus on other forest activities. Particular deficiencies prevail in organizational attention to Code requirements relative to off-block roads, bridges and silviculture.

The organizational structures, polices and processes of the Skeena Region of MWLAP do not adequately contribute to and support enforcement of the Code.

4.7 Criterion: *The decisions and actions of different parts of government responsible for enforcement of the Code are appropriate and coordinated.*

Effective interaction at the local offices of government agencies responsible for enforcing the Code is necessary to ensure that no significant gaps in enforcement arise.

The audit assessed whether:

- respective roles, responsibilities and interactions are defined, agreed and documented;
- communication and referral between agencies takes place and is coordinated and effective; and
- there are no significant gaps in enforcement or duplication of agency effort.

A regional memorandum of understanding (MOU) between the Prince Rupert Forest Region and the MWLAP Skeena Region, based on a provincial MOU dated January 1995, set out roles and responsibilities to jointly administer key aspects of Code C&E. However, the MOU is not being followed, as designed, by the Kalum Forest District or the MWLAP Skeena Region.

MWLAP's involvement in compliance matters is through the involvement of a forest ecosystem specialist (FES) at the operational planning stage, primarily participating in the review of forest development plans. Outside this committee process, reporting to the FES of the results of MOF inspection activities, for areas of joint interest, is limited to occasional informal discussion.

As a result, while the FES provides input into forest development plans, the FES does not receive sufficient information about the implementation of operational plans and whether on-site forest practices are in compliance with the plans. Under this approach, MWLAP senior officials are not attempting to use their C&E authorities under the Code, and the ministry has substantially removed itself from Code enforcement.

Conclusions

This criterion was not achieved by government agencies.

Coordination of activity between the responsible government agencies is limited and unsystematic and MWLAP's lack of participation in Code enforcement has diminished the effectiveness of environmental monitoring and assessments in relation to forestry activities.

4.8 Criterion: *Reporting systems provide adequate information on agency performance in relation to enforcement objectives.*

In order to ensure the effectiveness of C&E, agencies need to be able to judge their performance by establishing objectives and intended outcomes, and then measuring performance through the use of performance indicators and reliable reporting systems.

The audit examined whether clear and reasonable expectations are set for the operation of the C&E function; whether there are specific processes applied by the district to monitor and assess attainment of compliance and enforcement objectives and targets; and whether the activities of the agencies are adequately monitored and supervised, including consistency among forest officials and operational programs.

Ministry of Forests

The Kalum district has prepared a monitoring plan — the Kalum Monitoring Plan — that identifies the estimated number of inspections and sets a target number of inspections, based on projected risks, but only for harvesting activities. The plan does not address off-block forest activities, such as road and bridge maintenance. Without such a plan, the district is unable to justify its allocation of resources based on program risks.

Notwithstanding shortcomings in planning, effective management supervision and oversight can establish and reinforce appropriate program performance, especially with the singular assignment of responsibility to a designated zone officer and the more specifically defined requirements for C&E performance on the Nisga'a lands. However, there was limited supervision or oversight of zone officer C&E performance on Nisga'a lands during the audit period.

Under the *Nisga'a Final Agreement*, the Province is required to produce an annual report for each year of the five-year transition period, summarizing compliance and enforcement activities of the three enforcing agencies on Nisga'a lands. For the first year of the Agreement this report had not been submitted at the time of the audit.

Ministry of Water, Land and Air Protection

The MWLAP Skeena Region has established no specific planning, performance or accountability provisions relative to Code compliance and enforcement.

Conclusion

This criterion was partially achieved by government agencies.

Although the MOF adequately identified expectations for its C&E performance relative to harvesting activities, the measures used are not sufficient to guide and assess overall C&E performance, especially in relation to Code enforcement of off-block roads and bridges and silviculture activity. The performance of individual staff responsible for C&E has not been adequately addressed by district management.

MWLAP's planning and reporting systems do not adequately address the ministry's prospective role and responsibilities in relation to Code enforcement.

Calvin E. Lee
Auditor of Record

Victoria, British Columbia
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